COUNCIL OF THE EUROPEAN UNION

Brussels, 21 May 2014 (OR. en)

9873/14

Interinstitutional File: 2012/0010 (COD)

DATAPROTECT 72
JAI 314
DAPIX 65
FREMP 91
COMIX 265
CODEC 1296

NOTE

From:	Presidency
To:	Coreper/Council
No. prev. doc.:	6799/14 DATAPROTECT 32 JAI 108 DAPIX 28 FREMP 31 COMIX 113 CODEC 514
No. Cion doc.:	5833/12 DATAPROTECT 6 JAI 41 DAPIX 9 FREMP 8 COMIX 59 CODEC 217
Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (First reading) - State of play

I. INTRODUCTION

The proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data forms together with the proposal for a General Data Protection Regulation the *EU comprehensive data protection* package which was adopted by the Commission on 25 January 2012. The proposed Directive is intended to replace the 2008 Data Protection Framework Decision (DFPD) and aims to ensure a consistent and high level of data protection in this field, enhancing mutual trust between police and judicial authorities of different Member States and facilitating the free flow of data and co-operation between police and judicial authorities by covering both domestic and cross-border processing.

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs has appointed Mr Dimitrios Droutsas (EL/S&D) as Rapporteur. The European Parliament voted its report at first reading on 12 March 2014. The European Parliament is for the first time co-legislator with respect to the areas covered by this Directive.

II. WORK WITHIN THE COUNCIL BODIES

The detailed discussion on the proposal by the Working Party on Information Exchange and Data Protection (DAPIX) started under the DK Presidency and continued under the following Presidencies[1].

The Working Party finalised its first reading of the proposal under the IE Presidency. On the basis of a text drawn up by the IE Presidency DAPIX started its second reading of the proposal under the LT Presidency and finalised it under the EL Presidency in February 2014. delegations' comments The EL Presidency drew up a new text of Chapters I-IV taking into account delegations' comments. On the basis of that document DAPIX started its third reading of the draft Directive. At the last meeting on 19 May DAPIX finalised the third reading of Chapter IV.

[1] Cyprus and Lithuanian.

III. MAIN ISSUES DISCUSSED UNDER THE EL PRESEDENCY

Based on the examination by DAPIX, the Presidency can draw the following conclusions:

Scope

The subject matter, objectives and especially the scope of Directive have to be examined together with the scope of the Regulation in order to ensure coherence.

The EL Presidency responding to requests from several Member States has included in the scope of the Directive specific mentions of private and public entities/bodies under the cumulative conditions that they perform public duties or exercise public powers for the purposes of the Directive as their 'sole/predominant' task and that they are entrusted by law (for this). This is intended to reply to situations in which these public interest tasks such as airport security, prisons run by private entities, the forensic field or the transfer of prisoners are carried out by private bodies for the purposes of the Directive.

Member States generally supported extending the scope to cover private bodies but raised concerns as regards the framing of such bodies, the circumscription of what is to be understood by "sole/predominant tasks" and the other tasks that such a body would carry out as well the necessary clarification to be made with the concept of "competent authorities". It must be stressed that some Member States also opposed such extension of the scope.

Another issue pertaining to the scope of the proposed Directive was the concept of "maintenance of public order for the purposes of the prevention, investigation, detection or prosecution of criminal offences". The EL Presidency reworded the text replacing "maintenance of public order" with "for these purposes safeguarding *public security"*. Several Member States have expressed their concerns about this new notion also on the ground that these delegations found that the meaning of the concept differed from Member State to Member State. In this context the Working Party discussed what bodies were to be covered by the Directive and more specifically if the different branches of the police would fall under either the proposed Directive or the proposed Regulation depending on the kind of activities they carried out and how the activities of courts' would be dealt with.

At the request by a number of Member States the EL Presidency inserted a provision, already existing in the 2008 Data Protection Framework Decision that the Member States are not precluded from providing higher safeguards than those established in the Directive.

On the right of access for the data subject delegations discussed whether this access should be free of charge. Some delegations wanted to allow the Member States to charge a fee whereas other delegations could accept that the access was free of charge but only at certain intervals that should be set out in the Directive. Several delegations asked for clarifications of the provisions on the rights of rectification, erasure and restriction of processing.

As regards prior consultation of the supervisory authority for certain processing cases, the discussion concerned in particular the threshold for such consultation and whether national legislators should be obliged to consult the supervisory authority in the preparation of legislation. As regards the notification of personal data breaches, some delegations questioned the threshold for such notification and asked clarify the cases in which the data subject should be informed, and an amendment of this provision for the information of another Member State, where the data breach involves data transmitted to that Member State.

The issues that were indicated in our note from March 2014 remain valid.